

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**DEREK WILLIAM THOMAS,**

**Plaintiff,**

**v.**

**JERRY PATTON, *et al*,**

**Defendants.**

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**Civil No. 3:09-CV-1359-O  
ECF**

**ORDER ADOPTING FINDINGS AND RECOMMENDATION**

Before the Court is Plaintiff's Objection (Doc. # 19) to Magistrate Judge Irma Ramirez' Findings, Conclusions, and Recommendations (Doc. # 17) recommending Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. # 8) be DENIED and Defendants' Motion to Dismiss for Failure to State a Claim (Doc. # 8) be GRANTED. This case has been referred to Magistrate Judge Irma Ramirez for pretrial management. *See* Doc. # 10; 28 U.S.C. § 636(b).

After conducting an independent review of the pleadings, files and records in this case, the objection filed by Plaintiff, the Findings and Recommendation of the United States Magistrate Judge (Doc. # 17), in accordance with 28 U.S.C. § 636(b)(1), the Court concludes that the Findings and Recommendation of the Magistrate Judge are correct, and they are hereby accepted as the Findings of the Court.

Ordinarily, where a plaintiff declares the sufficiency of the pleadings and makes no attempt to amend a complaint in response to a Rule 12(b)(6) challenge, dismissal is proper, provided the allegations fail to state a claim for which relief can be granted. *See, Spiller v. City of Texas City*, 130 F.3d 162, 167 (5th Cir. 1997) (citing *Jacquez v. Procunier*, 801 F.2d 789,

792-93 (5th Cir.1986), and *Babb v. Dorman*, 33 F.3d 472, 479 (5th Cir.1994) (affirming a district court's refusal to grant a plaintiff leave to amend his complaint because he declared the sufficiency of his pleadings and did not offer a sufficient amended complaint in response to the defendant's motion to dismiss)).

In the present case, at no point after Defendant filed its Rule 12(b)(6) motion, or in his objection to the Magistrate Judge's Findings and Recommendation, did Plaintiff move to amend his complaint. Instead, Plaintiff has asserted the sufficiency of his claims as set forth in the complaint. Consequently, the Court finds that dismissal of Plaintiff's claims for the reasons stated is appropriate because he has not moved to amend his complaint, and he has consistently repeated the sufficiency of his pleadings.

Accordingly, Plaintiff's Complaint is dismissed for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

**SO ORDERED** on this **1st** day of **February, 2010**.

  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE